

HOUSE BILL No. 1713

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: Rate recovery for new generating facilities. Requires the utility regulatory commission (IURC) to issue an order approving or denying an application for a certificate of public convenience and necessity for: (1) the construction, purchase, or lease of an electric generating facility; or (2) the use of clean coal technology at an electric generating facility; not later than 120 days after the date of the application, unless the IURC finds that the applicant has not fully cooperated in the proceeding. Allows an eligible business to apply to the IURC for a retail rate adjustment mechanism to provide for a linear recovery of the business's forecasted costs incurred in connection with a new energy generating facility. Allows the eligible business to begin recovering its forecasted costs under the retail rate adjustment mechanism beginning on the date on which all required certificates have been issued by the IURC.

Effective: Upon passage.

Crooks

January 26, 2007, read first time and referred to Committee on Commerce, Energy and Utilities.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1713

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-8.5-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) As a
3 condition for receiving the certificate required under section 2 of this
4 chapter, the applicant shall file an estimate of construction, purchase,
5 or lease costs in such detail as the commission may require.

6 (b) The commission shall hold a public hearing on each ~~such~~
7 application **and, not later than one hundred twenty (120) days after**
8 **the date of the application, shall issue an order approving or**
9 **denying the application, unless the commission finds that the**
10 **applicant has not fully cooperated in the proceeding.** A certificate
11 shall be granted only if the commission has:

12 (1) made a finding as to the best estimate of construction,
13 purchase, or lease costs based on the evidence of record;

14 (2) made a finding that either:

15 (A) the construction, purchase, or lease will be consistent with
16 the commission's plan (or such part of the plan as may then be
17 developed, if any) for expansion of electric generating

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capacity; or

(B) the construction, purchase, or lease is consistent with a utility specific proposal submitted under section 3(e) of this chapter and approved under subsection (d). However, if the commission has developed, in whole or in part, a plan for the expansion of electric generating capacity and the applicant has filed and the commission has approved under subsection (d) a utility specific proposal submitted under section 3(e) of this chapter, the commission shall make a finding under this clause that the construction, purchase, or lease is consistent with the commission's plan, to the extent developed, and that the construction, purchase, or lease is consistent with the applicant's plan under section 3(e) of this chapter, to the extent the plan was approved by the commission;

(3) made a finding that the public convenience and necessity require or will require the construction, purchase, or lease of the facility; and

(4) made a finding that the facility, if it is a coal-consuming facility, utilizes Indiana coal or is justified, because of economic considerations or governmental requirements, in using non-Indiana coal.

(c) If:

(1) the commission grants a certificate under this chapter based upon a finding under subsection (b)(2) that the construction, purchase, or lease of a generating facility is consistent with the commission's plan for the expansion of electric generating capacity; and

(2) a court finally determines that the commission plan is invalid; the certificate shall remain in full force and effect if the certificate was also based upon a finding under subsection (b)(2) that the construction, purchase, or lease of the facility was consistent with a utility specific plan submitted under section 3(e) of this chapter and approved under subsection (d).

(d) The commission shall consider and approve, in whole or in part, or disapprove a utility specific proposal or an amendment thereto jointly with an application for a certificate under this chapter. However, such an approval or disapproval shall be solely for the purpose of acting upon the pending certificate for the construction, purchase, or lease of a facility for the generation of electricity.

SECTION 2. IC 8-1-8.7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) As a condition for receiving the certificate required under section 3 of this

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chapter, an applicant must file an estimate of the cost of constructing, implementing, and using clean coal technology and supportive technical information in as much detail as the commission requires.

(b) The commission shall hold a public hearing on each application **and, not later than one hundred twenty (120) days after the date of the application, shall issue an order approving or denying the application, unless the commission finds that the applicant has not fully cooperated in the proceeding.** A certificate shall be granted only if the commission has:

(1) made a finding that the public convenience and necessity will be served by the construction, implementation, and use of clean coal technology;

(2) approved the estimated costs;

(3) made a finding that the facility where the clean coal technology is employed:

(A) utilizes and will continue to utilize Indiana coal as its primary fuel source; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal; after the technology is in place; and

(4) made a finding on each of the factors described in section 3(b) of this chapter, including the dispatching priority of the facility to the utility.

SECTION 3. IC 8-1-8.8-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) The commission shall provide financial incentives to eligible businesses for new energy generating facilities in the form of timely recovery of the costs incurred in connection with the construction, repowering, expansion, operation, or maintenance of the facilities.

(b) **Except as provided in subsection (e)**, an eligible business seeking authority to timely recover the costs described in subsection (a) must apply to the commission for approval of a **retail** rate adjustment mechanism **under this subsection** in the manner determined by the commission. ~~(c)~~ An application **for a retail rate adjustment mechanism** must include the following:

(1) A schedule for the completion of construction, repowering, or expansion of the new energy generating facility for which rate relief is sought.

(2) Copies of the most recent integrated resource plan filed with the commission.

(3) The amount of capital investment by the eligible business in the new energy generating facility.

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(4) Other information the commission considers necessary.

A retail rate adjustment mechanism proposed by an eligible business under this subsection may be based on actual or forecasted data. If forecasted data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct for any variance between the forecasted costs and the actual costs.

~~(d)~~ (c) The commission shall allow an eligible business to recover the costs associated with qualified utility system property if the eligible business provides substantial documentation that the expected costs associated with qualified utility system property and the schedule for incurring those costs are reasonable and necessary.

~~(e)~~ (d) The commission shall allow an eligible business to recover the costs associated with the purchase of fuels produced by a coal gasification facility if the eligible business provides substantial documentation that the costs associated with the purchase are reasonable and necessary.

~~(f)~~ A retail rate adjustment mechanism proposed by an eligible business under this section may be based on actual or forecasted data. If forecast data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct for any variance between the forecasted costs and the actual costs.

(e) This subsection applies to an eligible business that seeks to recover the costs incurred in connection with the construction, repowering, expansion, operation, or maintenance of a new energy generating facility. Instead of the retail rate adjustment mechanism described in subsection (b), an eligible business may apply to the commission for approval of a retail rate adjustment mechanism to provide for a linear recovery of the eligible business's forecasted costs. The commission may approve a retail rate adjustment mechanism under this subsection if the eligible business:

- (1) provides the information required for an application under subsection (b);**
- (2) meets the requirements of subsection (c); and**
- (3) obtains any certificate required under:**
 - (A) IC 8-1-8.5;**
 - (B) IC 8-1-8.7, if applicable; and**
 - (C) section 11(b) of this chapter.**

If the commission approves a retail rate adjustment mechanism under this subsection, the eligible business may begin recovering the eligible business's forecasted costs beginning on the date on

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- 1 **which all required certificates described in subdivision (3) have**
2 **been issued by the commission.**
3 **SECTION 4. An emergency is declared for this act.**

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